

General Terms and Conditions of Sale and Delivery of Spare Parts

Präambel:

Hertwich Engineering GmbH (in the following "Hertwich", a company of the SMS group, is active worldwide with design, supply, construction and commissioning of machinery and equipment for the aluminium industry, foremost aluminium casthouses.

I. General

All, including prospective, supplies and performances are based on these General Terms and Conditions as well as any separate contractual agreements. Any other terms and conditions, regardless of whether contradicting or supplementary, do not become part of the contract even if Hertwich does not expressly contradict them.

II. Quotation and conclusion of contract

The documents, such as illustrations, drawings, weights and dimensions specified are only approximately relevant unless they have been expressly deemed binding.

The right of ownership and copyright in respect of any intellectual property rights, cost estimates, drawings and other documents/information shall remain with Hertwich; these may not be used or made available to third parties without its express approval. The same shall apply to other technical details which are obtained from Hertwich delivery or which Hertwich reveals to the customer in the quotation, in other correspondence or during negotiations.

All quotations which do not contain an acceptance date are subject to change without notice. The order shall become binding for Hertwich only in case of its written acceptance.

Conclusions and other agreements, in particular insofar as they modify these conditions, shall become binding only with Hertwich's written confirmation.

Hertwich shall be entitled to execute any contract in cooperation with subcontractors without the Buyer's approval.

III. Price, payment, security

The prices shall in the absence of a special agreement be valid FCA ("free Carrier") including loading of the works but excluding packaging. Should there be an increase in the cost factors (prices of materials, operating materials, wages and freight) decisive for the pricing, Hertwich is entitled to adapt the price accordingly.

Payments must be made within a period of 14 days from date of invoice without deductions.

The Buyer is under no circumstances entitled to exercise a right of retention, not even if he has objections to the delivery item. If payment of any sum payable is delayed, Hertwich shall be entitled to receive interest on the amount unpaid during the period of delay. The interest shall be calculated at an annual rate of 6% above the rate of the main refinancing facility of the European Central Bank (ECB). This shall not exclude the assertion of a further claim for damages in the event of delay on the part of the Buyer. After unsuccessful elapse of a reasonable grace period, Hertwich is entitled to terminate the contractual relationship.

Hertwich is entitled to request additional payment security from the Buyer at all times for its demands, insofar as sufficient security has not been provided or is no longer available.

IV. Duties, Taxes, etc.

Contractual prices are payable net without any deductions.

The contract price does not include any customs duties, local taxes, import duties, fees, levies or other charges which may be brought on by authorities in the Buyer's country or any transit country. In case such taxes and duties are incurred, including source tax / withholding tax, they shall be borne and paid by the Buyer.

V. Delivery

The agreed delivery clauses shall be interpreted in line with the INCOTERMS 2020.

Should there not be any specific delivery clause, the subject of delivery shall be deemed to have been delivered "FCA ("free Carrier)". Cost for packing will be paid by Buyer.

Part deliveries are permitted, unless otherwise agreed.

The delivery period depends on the individual agreements among the contracting parties. Moreover, they are conditional to the clarification of all commercial and technical details, failing which, the delivery period shall be extended accordingly.

The delivery period commences with the dispatch of the order acknowledgement, however only conditional after furnishing of the documents and approvals to be provided by the Buyer, and receipt of the agreed down payment and payment securities.

The delivery dates are deemed to be met according to the individual agreement if the delivery item has left the works or notification of readiness for shipment has been submitted within the delivery period.

The delivery period shall be extended accordingly in the event of unforeseeable hindrances occurring which are beyond Hertwich's control, regardless of whether they occur in Hertwich's works or in the works of our subsupplier, e.g., operating malfunctions or delays in the supply of essential raw and construction materials, insofar as such hindrances influence the completion of delivery of the delivery item. Hertwich shall also not be responsible for the aforementioned circumstances if and when they occur during a delay period that has already started.

Events that adequately extend the delivery period are all union activities, in particular strikes and lockouts.

Buyer has to accept delivery of the goods in case of defects, notwithstanding the rights under Section IX. A special examination or acceptance can be demanded by both parties only on the basis of an agreement in this respect. The Buyer shall bear the costs of such test of acceptance.

If shipment is delayed as a result of circumstances attributable to the Buyer, Hertwich has the right to store the delivery item or have it stored by any other party at Buyer's expense and risk. The due date of the purchase price shall not be affected by the delay in shipment. Hertwich has the right to set the Buyer a grace period by acceptance and, in the event of unsuccessful expiry of said grace period to terminate the contractual relationship or to use the delivery item for other purposes. The Buyer must reimburse any damage hereby incurred.

VI. Software

To the extent being comprised in our Supplies, the ownership and intellectual property rights in software shall at all times remain vested in us. Hertwich shall grant to the Buyer a perpetual, non-exclusive, non-transferable and royalty free licence to use the software for the operation, repair and maintenance of the devices having been subject of the Supplies. Any further use shall be restricted.

Hertwich does not provide the Buyer with the source code. The Buyer shall neither have the right to reconstruct the source code nor to recompile the software nor to modify or reproduce the latter and the pertaining documentation. In no event shall the Buyer be entitled to remove references to the producer or creator of the software without Hertwich's prior written consent.

Hertwich's warranty for defects in software shall be limited to reproducible defects. Such warranty starts with making use of the software and remains in force for six (6) months. The Buyer shall notify Hertwich about any defect ascertained without undue delay in writing. Hertwich shall be obliged to remedy such defects at its discretion either by repair or replacement of defective software.

Any damages resulting from misuse, wrong handling or through other circumstances beyond Hertwich's control shall be excluded from Hertwich's warranty.

VII. Insurance

At the Buyer's request, Hertwich can insure the consignment at Buyer's expense against damage caused by breakage, transport, fire and water.

VIII. Reservation of ownership

The ownership of the delivery items shall pass to the Buyer only after receipt of all payments arising from the contractual relationship.

From the time of delivery to the transfer of ownership, Buyer must insure the delivery items against any infringement up to the full value. The

Buyer shall inform Hertwich immediately in case of seizure or any other infringement of its rights by third parties.

Insofar as the validity of the reservation of ownership is linked to formalities or other preconditions or is legally not possible outside the Republic of Austria, the Buyer shall ensure that a corresponding security is granted to Hertwich.

IX. Liability for defects in delivery

Hertwich warrants that the equipment is free of defects or bad workmanship.

Duration of warranty period is 12 months from delivery or 24 months from ordering, whichever ends earlier. The statutory period of limitations for damage claims of the Buyer due to defects and their consequences terminates at the same time as the warranty period stipulated above.

In case of defects Hertwich shall at its discretion either rectify such defect or repair, replace, or redeliver the defective part of the equipment within an appropriate period of time. Of the direct expenses incurred by the rectification and/or substitute delivery, Hertwich shall bear – insofar as the objection proves to be justified – the costs of the replacement item, including shipment.

Hertwich shall not be liable and the warranties stipulated in this Clause shall not apply in case of:

- Faulty erection or commissioning by Buyer or third parties
- Improper handling/storage after delivery, incorrect or negligent operation or improper maintenance, unsuitable operation materials
- Non-compliance with or improper implementation of Hertwichs recommendations during Supervision;
- For Software: non reproducible defects
- Any alterations made by the Buyer or third parties without the written consent of Hertwich
- Normal wear and tear

Any defects must be reported without undue delay of first occurrence.

Any further rights and/or remedies in regard to defects of the delivered equipment of the Buyer shall be expressly excluded.

X. Liability

Hertwichs liability for indirect or consequential damages such as, but not limited to loss of production, loss of use, loss of profit, shutdown costs, loss of interest, or other indirect costs and any resulting claims for damages, shall be expressly excluded irrespective of the legal basis of the claim.

Hertwichs overall aggregate total liability and responsibility arising out of or in connection with the contractual relationship for any reason whatsoever for damage compensation including, but not limited to liquidated damages, warranty, non-performance and/or mal-performance, delay, indemnification, repayment, termination of the contractual relationship and for all other claims based on the contractual relationship or applicable law shall be limited to an overall amount equal to 20% (twenty per cent) of the Contract price.

This exclusion of liability does not apply to bodily injuries and to illegal intent or gross negligence.

The above is also valid for auxiliary personnel.

XI. Force Majeure

In case a party is affected by circumstances of Force Majeure, which shall include but not be limited to acts of God, governmental or administrative acts or omission, war (regardless whether declared or not), warlike circumstances, mobilisation, riot, piracy, embargo, strike, lock-out, fire and flood, either party shall be entitled to withhold further execution of its contractual obligations.

If the execution of the contract is delayed for more than four (4) months due to Force Majeure and the parties have not agreed on a new basis to continue the execution of the contract after said period, either party shall be entitled, provided that Force Majeure persists, to terminate the contract in writing. Our right to claim payment of the contract price and

expenses for Supplies provided until the beginning of Force Majeure shall survive such termination.

XII. Right of rescission

Hertwich is entitled to rescind from the contractual relationship in full or in part if it subsequently turns out that execution is impossible. A partial rescission is only possible if the Buyer is interested, solely for his own purposes, in that part of the agreed delivery that is not affected by the aforementioned circumstances.

The Buyer is not entitled to claim damages on account of such a rescission. Hertwich shall inform the Buyer hereof immediately after finding out about the implications of the event if an extension of the delivery period had initially been agreed upon with the Buyer. The right of rescission is also possible in this case.

XIII. Confidentiality

The contracting parties undertake to keep secret any information which is made available to them in conjunction with the contractual relationship or within the scope of the business relationship and which is described as confidential or can be identified as a business or operating secret on the basis of other circumstances and not to record or use them in any way unless appropriate for attaining the contractual purpose.

The Buyer shall use the information and Know How received from the Seller in the form of technical drawings and documentation, in the form of instructions given by the Hertwichs personnel as well as in the form of the equipment purchased under the contractual relationship only for operation of the single plant that is subject of the contractual relationship.

XIV. Applicable Law

These terms and conditions and any contracts concluded hereunder shall be governed by the substantive laws of Austria under exclusion of conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Any and all disputes arising out of or in connection with these terms and conditions and any contracts concluded hereunder shall be finally and exclusively settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules without recourse to the ordinary courts of law. Place of arbitration shall be Vienna, Austria. The language of the arbitration proceedings shall be English.

XV. Termination

Without prejudice to any other clause contained herein, the contractual relationship may be terminated per convenience by Hertwich.

XVI. Export Control

This quotation is issued subject to assessment for clearance by the Austrian Federal Ministry of Economy in terms of export to your country of the quoted scope of supply (export control).

XVII. Miscellaneous

All of Hertwichs obligations and the Buyer's rights are stipulated exhaustively in these General Terms and Conditions; any additional application of rights and duties according to the applicable law shall be excluded.

In case any of the provisions of this Contract is or becomes ineffective, invalid, or unenforceable, this shall not affect the validity or enforceability of the remaining provisions of this Contract. The ineffective, invalid, or unenforceable provision shall be replaced by a legally valid and enforceable provision which is as close as possible to the will and intended purpose of the invalid and / or unenforceable provision and / or the will and intended purpose of the parties. The same shall apply respectively in case of omissions and/or ambiguities / discrepancies.

**IN THE EVENT THAT INDIVIDUAL TERMS WILL BECOME
INEFFECTIVE BY COMPELLING LAW, ALL OTHER TERMS
HEREIN SHALL REMAIN BINDING.**